

REMARKS

Upon entry of the present amendment the claims under consideration are 22, 26-37, and 39-57. The independent Claims, 22, 37 and 39, have been amended to make clear that the machine direction stretchability of the biaxially stretchable breathable laminate of the present invention is achieved by creping of the nonwoven and bonding to the breathable film without the use of intermediate mechanical fixing steps to maintain an intended breathability level. No new matter is added hereby. Claims 40-57 have been added hereby to specify various physical attributes of the invention now dependent from Claim 37 as originally presented in Claims 2-6 and 8-20. The Detailed Action of 23 December 2003 will now be addressed with reference to any headings and paragraph numbers contained therein.

Claim Rejections - 35 U.S.C. § 103

Per paragraph 3 of the Detailed Action, Claims 22, and 26-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,883,028 to Morman et al. (Morman '028) in view of U.S. Patent No. 6,129,801 to Benson et al. (hereinafter "Benson"). Applicants have amended the independent Claims and further traverse these rejections in part, as set forth below.

Applicants have herewith amended the independent Claims 22 and 37 to make clear that the machine direction stretchability of the biaxially stretchable breathable laminate of the present invention is achieved by creping without the use of intermediate mechanical fixing steps. Such intermediate mechanical fixing steps as are taught in Benson represent additional processing over the present invention which can lead to an increased chance of changing the structure or damaging the fibers or nonwoven the web. As would be clear to a person having ordinary skill in the art, such change or damage may result in loss of the designed-in performance of the initial web, including the claimed breathability, or structural strength, loft, hand, or other physical factors.

Per paragraph 4 of the Detailed Action, Claim 39 stands rejected under

35 U.S.C. § 103(a) as being unpatentable over Morman in view of Benson and U.S. Patent No. 5,554,143 to Roe et al. (hereinafter "Roe"). Roe teaches an absorbent article having a waist feature that includes a structural elastic-like film that may be prestretched to give the material added bulk. Applicants reiterate their arguments above with respect to the lack of applicability of Morman and Benson and further respectfully contend that the additional teachings of Roe do not render the present invention obvious in combination therewith.

Examiner Interview Summary

Applicants' undersigned attorney and Examiner Alex Wachtel conducted telephonic interviews on 23 March 2004 and 12 April 2004. It was agreed that the addition of physical limitations commensurate with Applicant's prior arguments with respect to the inapplicability of the Morman and Benson references, if added to the claims, would overcome the cited art. However, the Examiner stated that an additional search would need to be conducted and therefore a Request for Continued Examination would be required. Applicants' attorney wishes to thank the Examiner for the courtesy shown him during their interviews.

Request For Telephonic Interview

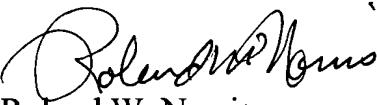
Clearly, there are differences between the present invention and the cited reference(s) involving patentable subject matter. These differences are believed by the Applicants to be properly defined in the present Claims. The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. § 713) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance before issuing a further Office Action.

Applicants herewith petition and request a one month extension of time for responding to the final Office Action of 23 December 2003.

A Request for Continued Examination is submitted concurrently herewith. A check for the fees associated with the extension of time and the Request for Continued Examination is included herewith. No fees for the presentation of Claims 40-57 are believed owing because said Claims are presented in place of originally presented and paid for Claims 2-6 and 8-20.

Favorable consideration is requested.

Respectfully submitted,



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